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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,644	01/29/2004	Yvan Kurzo	16650	5400
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FRASER CLEMENS MARTIN & MILLER LLC			EXAMINER	
28366 KENSINGTON LANE			LE, MARK T	
PERRYSBURG, OH 43551				
			ART UNIT	PAPER NUMBER
			3617	
			MAIL DATE	DELIVERY MODE
			07/10/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/767,644

Applicant(s)

KURZO, YVAN

Examiner

Mark T. Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-15, 19-24 is/are rejected.
- 7) ☒ Claim(s) 7 and 16-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                 | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

### DETAILED ACTION

1. In claim 1, line 7, "the guide rail section" lacks antecedent basis.

In claim 10, line 2, "the side supports" lacks antecedent basis.

Correction is required.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 23 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, it is not clear as to how one skilled in the art would make and/or use the invention with at least one pin extending through apertures formed in the rail base of the guide rail and the substrate, as recited in instant claim 23.

4. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The wordings of claim 23 appear to be incorrect and inconsistent with the invention described in the instant specification. Specifically, rail base 11 of the present invention does not have an aperture for receiving the pin of the support means.

5. Due to the nature of indefiniteness of claim 23, claim 23 cannot be further treated on the merits.

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6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-6, 14-15, 21-22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Meier (US 5,346,131).

Meier discloses a floating mount device having all the features as recited in the instant claims, including support means or fixing device 6 secured by fasteners substrate U; a first movable part, which is the left portion of element 3, supported by flexible elements 9a, 9b, and a first stop which is the corresponding surface of element 6 that would be in contact with tooth 4 and the left edge of part 3 upon sufficient load being applied on guide rail 1; and a second movable part, which is the right portion of element 3, supported by flexible element 9d, and a second stop which is the corresponding surface of element 6 that would be in contact with the right side surface of the element 3 upon sufficient lateral load being applied in the direction toward the external side of the railroad track.

Regarding the instant method claims, note that the mounting operation of the structure of Meier inherently requires the method steps as claimed.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meier (US 5,346,131).

Meier is applied above.

Regarding the instant claimed step of forming the flexible element with a side support retaining at least one flexible sleeve element, as recited in instant claim 8, consider side support 3a of Meier, which includes claws that hold down rail base 1a, upwardly extending bolts, associated threaded nuts, and a compressed coil member between the threaded nuts and the claws. It is noted that Meier does not specifically describe that the coil members are in the form of coil springs or a flexible members. However, it would have been obvious to one skilled in the art to provide said coil members of Meier as flexible members or coil springs for preventing loosening of the associated threaded nuts 3 because such practice is well known in the art of fasteners (Official Notice is taken). Note that said flexible coil members of Meier are readable as flexible sleeve element as claimed.

10. Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meier (US 5,346,131) in view of Karol (US 4,431,087).

Meier is applied above.

Regarding the instant claimed flexible disc element, as recited in instant claims 11 and 12, consider flexible disc element 56 of Karol which is a well known alternative means for preventing loosening of the associated threaded nuts. In view of Karol, it would have been obvious to one skilled in the art to replace the coil elements

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associated with the threaded nuts on fasteners 3a of Meier with lock washers or flexible discs, similar to that taught by Karol, for performing the same expected function of preventing loosening of the associated threaded nuts.

11. Claims 14 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hewitt (US 1,836,713) in view of European reference EP 0 448 839 A1.

Hewitt discloses a device similar to that recited in the instant claims, including support means 9, movable part 14, flexible elements 15 and stops 13. It is noted that the flexible elements 15 of Hewitt are not in the form of flexible discs as claimed. However, note that springs in the form of flexible discs are well known. Note for example flexible discs 4 and 5 of the European reference. Therefore, it would have been obvious to one skilled in the art to alternatively substitute flexible discs, similar to that of the European reference, for the coil springs used in Hewitt for performing the same expected function and achieving the expected advantages thereof.


12. Claims 7 and 16-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Le whose telephone number is 571-272-6682. The examiner can normally be reached on Mon-Fri, between 9AM-3PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Mark T. Le  
Primary Examiner  
Art Unit 3617

mle  
6/29/07